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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT
 OPPORTUNITY COMMISSION,

Plaintiff,

vs.

TESLA, INC.

Defendant.

Case No.: 3:23-cv-04984-JSC

**DECLARATION OF NANCY SIENKO IN
 SUPPORT OF PLAINTIFF EEOC'S
 OPPOSITION TO DEFENDANT TESLA,
 INC.'S MOTION TO STAY ALL
 PROCEEDINGS**

I, Nancy Sienko, being of lawful age, declare under the penalty of perjury, that the following statements are true and correct to the best of my knowledge:

1. I am the District Director of the San Francisco District Office of the Equal Employment Opportunity Commission (EEOC).
2. As District Director, I have authority to make determinations finding reasonable cause and to issue cause letters of determination, pursuant to 29 C.F.R. § 1601.21(d). I also have authority to enter into informal conciliation efforts and to negotiate and sign conciliation agreements, pursuant to 29 C.F.R. § 1601.24.

1 3. Where the Commission is unable to obtain voluntary compliance, I have the
2 authority, pursuant to 29 C.F.R. § 1601.25, to determine that further efforts to do so would be futile
3 or nonproductive and to so notify the respondent in writing.

4 4. On May 28, 2019, Chair Burrows, then Commissioner Burrows, filed a sworn Charge
5 of Discrimination against Tesla, Charge No. 555-2019-01273. (Exhibit 1)

6 5. The Commissioner's Charge alleged that "since at least May 29, 2015, [Tesla] may
7 have violated, and may continue to violate, Title VII of the Civil Rights Act of 1964, as amended, by
8 discriminating against employees based on their race (black) and retaliating against employees for
9 engaging in protected activity."

10 6. I have reviewed the investigative file for Charge No. 555-2019-01273.

11 7. The San Francisco District Office of the EEOC conducted an investigation of Charge
12 No. 555-2019-01273, including requesting and reviewing information produced by Tesla,
13 interviewing current and former Black workers employed by Tesla, and reviewing sworn
14 declaration, deposition, trial and arbitration testimony of current and former employees including
15 managers and human resources representatives.

16 8. EEOC conducted the investigation consistent with the worksharing agreement
17 between EEOC and the California Civil Rights Department.

18 9. After three years, EEOC had amassed ample evidence to assess the merits of the
19 allegations in Commissioner Burrows' charge.

20 10. In March 2022, EEOC notified Tesla that it had concluded its investigation and
21 was prepared to issue a determination.

22 11. On March 21, 2022, an EEOC investigator conducted a one-hour verbal
23 Predetermination Interview with Tesla counsel Sara Begley, Stephanie Stroup and David Searle.
24 The investigator advised Tesla that the EEOC, having concluded its investigation, intended to issue a
25 cause finding on Charge No. 555-2019-01273. The investigator described the proposed findings of
26 hostile work environment and retaliation against a class of employees employed at Tesla's Fremont
27 facilities since May 29, 2019. The investigator also detailed the facts and evidence supporting the
28 cause finding. The investigator invited Tesla to submit a written rebuttal, including any evidence it

1 wanted to provide to refute the EEOC's findings, by March 29, 2022, and then was granted an
2 extension of time to April 6, 2022, as requested.

3 12. On April 6, 2022, Tesla counsel Sara Begley submitted a rebuttal letter that raised
4 concerns about the investigation and certain legal issues and requested a meeting with EEOC. Tesla
5 did not submit additional evidence with this letter.

6 13. On April 29, 2022, I spoke to Tesla counsel Sara Begley by telephone at her request.
7 She complimented the EEOC investigator's Predetermination Interview and "remarkable job"
8 presenting the facts and evidence leading to EEOC's cause finding. She also asked for a meeting to
9 have the opportunity to share information with EEOC and to "explore the pathway forward"
10 regarding this matter. I asked EEOC staff to schedule the requested meeting.

11 14. On May 24, 2022, I, the Regional Attorney and enforcement staff for the San
12 Francisco District Office met via Zoom with Tesla counsel, Sara Begley and Stephanie Stroup, as
13 requested, to provide an opportunity for Tesla to present any information and evidence it wished to
14 rebut the EEOC's cause finding. The meeting last approximately one hour. The EEOC listened to
15 and gave due consideration to Tesla's presentation then granted Tesla another window to supplement
16 the evidentiary record before EEOC finalized its investigation.

17 15. On June 1, 2022, the EEOC issued to Tesla a Letter of Determination finding
18 reasonable cause to believe that Tesla "violated Title VII of the Civil Rights Act of 1964, as
19 amended, by subjecting a class of Black employees to a hostile work environment and retaliating
20 against a class of Black employees who engaged in protected activity. The aggrieved persons
21 include all Black employees who were employed at [Tesla's] Fremont, CA facilities at any time
22 since May 29, 2015, to the present, who have been adversely affected by such unlawful employment
23 practices." (Exhibit 2)

24 16. The Letter of Determination also invited Tesla to join EEOC "in collective efforts
25 toward a just resolution of this matter through informal methods of conciliation".

26 17. Between July 28, 2022, and June 21, 2023, the EEOC engaged in communications
27 with Tesla to provide it the opportunity to remedy the discriminatory practices described in the
28 Letter of Determination, including exchanging ,multiple email messages and phone calls with Tesla,

1 sending Tesla a conciliation proposal, and participating in a seven hour, in person conciliation
2 session at EEOC's San Francisco office on June 13, 2023.

3 18. I concluded that further conciliation efforts would not result in the Commission being
4 able to secure from Tesla a conciliation agreement, including monetary relief, acceptable to the
5 Commission.

6 19. On June 21, 2023, I issued a notice to Tesla stating that conciliation efforts as
7 required by law had occurred and had been unsuccessful, and that the EEOC had determined that
8 further conciliation efforts would be futile or non-productive. (Exhibit 3)

9 Executed pursuant to 28 U.S. C. § 1746, this 3rd day of January 2024.

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Nancy Sienko
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